

Exhibit No. 3Date 2-14-07Bill No. SR-3**Confirmation Hearings for Commissioner Unsworth****Background:**

The Montana Commissioner of Political Practices is virtually without peer in the world of state campaign finance and ethics oversight. He is a single, partisan appointee with czar-like powers to investigate individuals charged—rightly or wrongly—with violations of Montana's campaign finance laws. He has the power to issue findings on alleged violations, refer violations to prosecutors, and bring his own civil actions. Most important, perhaps, is his power of investigation. Unlike almost any other state, Montana gives a single man the power to subpoena and disclose to the public all the documents he believes are relevant to an allegation, even if those documents relate to the internal strategy and workings of political parties, campaigns, and committees. He has the power to take the sworn testimony of candidates, party operatives, and anyone he suspects of being a supporter of a Montana political group that is the subject of a complaint. And he can do all of this during the midst of an election. In other words, this partisan appointee has the power, so long as one Montana citizen files a complaint, to render any political campaign or committee ineffective during any stage of a campaign.

Time and experience in Montana has shown that this system must be changed. Most states and the federal government have an ethics or election commission comprised of an equal number of commissioners from both major parties. While the commission still has substantial power, it is not subject to partisan influence or the whims, biases, inattention, or even incompetencies that necessarily exist to some degree with any single individual (who, to make matters worse, often has little or no legal or electoral compliance experience). Legislation is now pending to bring Montana more in to line with the rest of the country and to eliminate the arbitrary (and frankly unconstitutional) wild card of coercive partisan influence in campaign finance enforcement. But we do not have that system yet. It is therefore critical that until this body enacts such a system, we have an individual who can, as much as possible, preside over our broken system with:

- fairness
- lack of partisanship
- few obligations to important officeholders in either party
- independence
- substantial experience in electoral compliance
- intelligence
- competence.

We believe that while Dennis Unsworth is an ethical man, he is a partisan appointee beholden to the Governor who does not have the requisite bipartisan support, instincts of fairness, independence, experience, or competence to be (hopefully the last) Political Practices czar.

Dennis Unsworth:

1. Dennis Unsworth was given a recess appointment by Governor Schweitzer during the summer of 2006, replacing Gordon Higgins, a final Governor Martz appointee who, in the midst of the election season and shortly after several complaints were filed against several ballot initiatives, abruptly made a lateral move to another government post.
2. Unsworth was relatively unknown to legislative leaders, and had little experience in dealing with electoral compliance. Unknown to almost anyone but the Governor and some Democrat operatives, he was a strongly partisan Democrat.
3. In coordination with Governor Schweitzer, who spoke out repeatedly and vigorously against a spending limits initiative (CI-97) last summer, Unsworth announced that the recently-filed complaints of Democrat lawyer Jonathan Motl against this initiative and two related measures would jump from the bottom to the top of his list of investigative priorities.
4. Unsworth promptly stepped up the pressure on the committees, demanding that each one of them produce (among other items that actually were relevant to the pending charges) all of their paper and electronic documents regarding political strategy and their political association.
5. This kind of request is patently unconstitutional because it goes far beyond the scope of the actual allegations being investigated.
6. No one disputes that a campaign finance investigator can look at the documents that would be needed to prove or disprove the allegations in a good-faith citizen complaint. But when all the documents and communications regarding a political organization are indiscriminately opened to the public, without any regard for whether they relate to the charges filed, the investigation of specific violations turns into a fishing expedition. Our First Amendment rights of free speech and free association are violated.
7. But how can a simple investigation violate someone's First Amendment rights? Why would anyone object to disclosing all of their internal political communications, or testifying under oath about their political activities, if they haven't done anything wrong? Shouldn't they have nothing to hide? These are actual arguments the Commissioner has recently made before a court in trying to justify his excessive investigative activities.
8. Anyone with even some political experience knows that these arguments are false. The actual or even threatened disclosure of all of the organization's emails and documents, or the actual or threatened requirement that all of a political organization's workers testify under oath, would keep many good,

intelligent, hard-working citizens from even being involved in a campaign – especially when they know that the single person in charge of investigating them is a blatantly political appointee who answers to his own party. Further, even the seasoned politicians who still campaign, year in and year out, will find that they are reluctant to put things down on paper, or have to hire lawyers every year that the Commissioner is from the opposite party. Frequent threats of investigation simply gum up the works of campaigns and political committees, making it all but impossible to operate. Finally, under Montana law, the investigated information can be made public and leaked to political opponents, essentially frustrating the ability of a political committee or group to function.

9. Many of these constitutional problems with overbroad political investigations are common-sense. But there is also a large body of law on the subject, too, and it makes clear that political investigations have to be reasonably limited to the alleged violations being investigated. Otherwise, they are unconstitutional.
10. In dealing with the political committees for CI-97 and other initiatives that his friend the Governor so strongly opposed last summer, Commissioner Unsworth simply disregarded both common sense and the law. Just before the November elections, in fact, he converted his demands for documents and interviews into subpoenas, which carry with them the threat of contempt if they are not obeyed and the Commissioner takes them to court for enforcement. He gave the parties two days to produce all documents related in anyway to the campaign and to prepare for his demand for an investigative interview.
11. When the supporters of the committees asked Unsworth to withdraw the subpoenas and request only those documents related to the allegations, he refused. He stated, and in legal papers he filed in federal court, still states, that the First Amendment places no limits on his ability to take and make public any document or communication between any two individuals.
12. This position is flatly wrong, and against the law. If it were true, then Montana's shaky and easily manipulated [Does this look like we know it is easily manipulated because we did minipulate it]. campaign finance compliance system would be subject to even more rampant political influence and abuse than it is now. Arguably, the only thing that has kept it from becoming a complete disaster until now is that the individuals who have held the position have, for whatever reason, exercised some restraint and common sense.
13. Commissioner Unsworth has been aware of the constitutional restraints on his investigative powers, or should have been aware of them, long before he took office and began firing off document demands and subpoenas last summer.

But he is simply disregarding these constitutional restraints. Because of that, the committees behind CI-97 and the other initiatives Unsworth was investigating have had to take legal action to make a federal court tell him to stop.

What is at stake now.

14. Unfortunately, going to court is a long and expensive process, and the current effort to bring Unsworth back in to line is still ongoing. It also involves the expenditure of tax dollars because the attorney general is obligated to defend the Commissioner every time this happens. Do we want the kind of campaign finance system where, with the wrong man in office, political groups must constantly run to court to get orders requiring him to comply with Montana law and the U.S. Constitution? Surely not. But that is the system we have now.
15. And under that current system of campaign finance enforcement, a single man, Commissioner Unsworth holds a very sensitive position. Perhaps no other single individual holds so much power, and must exercise so much discretion, in balancing two of Montana citizens' most fundamental rights: the right to a clean election system, and citizens' rights to associate and operate political groups free from government oversight, intimidation, and harassment. The way things are set up now, we require that this single individual have almost super-human powers of fairness, non-partisanship, intelligence, experience, and knowledge of the law of campaigns and elections. If this individual doesn't have those qualities, it is a recipe for disaster.
16. Further, if we know our current system is open to such abuse by allowing a single Governor-appointed partisan to run the show, would the members of either major party be doing their duty under the Montana and U.S. Constitutions by consenting to the recess appointment of a man who has demonstrated that he will not abide by the First Amendment?
17. Unsworth has demonstrated that he does not believe any balancing need occur, and has recently filed a brief in which he claims there are no First Amendment limits on his power. He should be closely questioned. In conclusion, this body has a fundamental duty to make sure of at least the following:
 - First and foremost, has he educated himself as to what Montana law and the First Amendment requires of him?
 - Does he admit that the First Amendment rights of others, restrains him from looking into anything he wants, regardless of whether it relates to the alleged violations?
 - What about the Fourth Amendment and citizens' expectation of privacy?

- Is he a man of such character, intellect, and knowledge that he can exercise judgment about who and what should be investigated, independent of the Governor's influence?
- Is he a man of such character, intellect, and knowledge that he can exercise judgment with some understanding of the law, and can ask tough questions of his Office's lawyers?
- Does he have sufficient experience in and understanding of the electoral process, campaign finance rules, and the effect that government investigation can have on the functioning of political committees?

18. The members of this body are eminently experienced in politics and know precisely what is at stake here, and undoubtedly have more questions of their own. Now is the time those questions should be asked. If the answers don't demonstrate a radical change in this individual's competence, now is the time to take action. The Governor's next appointee should be similarly scrutinized. There are already enough important, close issues in Montana politics, and well-informed, vigorous public debate is critical. Political organizations are the key to making this happen. Neither the major parties, Montana's other political committees, nor the public at large can afford to have an uninformed partisan in a position with the power to destroy campaigns and political organizations.

Respectfully Submitted

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